

October 8, 2002

PUBLIC UTILITIES COMMISSION
Amendments to Information Disclosure
Rule (Chapter 306)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to consider amendments to the Uniform Information Disclosure rule (Chapter 306) that would adopt the recently implemented NEPOOL GIS as the means for determining and verifying the resource mix and emission characteristics contained on disclosure labels. We also propose several other amendments based on our experience in implementing the current rule. These amendments are intended primarily to simplify the application of the rule.

II. BACKGROUND

Chapter 306 was among a series of rules that the Commission promulgated prior to March 1, 2000 to implement Maine's Electric Restructuring Act. The rule implements the legislative directive that the Commission provide for the dissemination of information that enhances the ability of consumers to effectively make choices in the competitive electricity market. 35-A M.R.S.A. § 3203(3). The current rule, which was designed to closely mirror the NECPUC model disclosure rule, does not allow for the use of tradable credits or certificates to satisfy the rule's requirements.¹ *Order Provisionally Adopting Rule*, Docket No. 98-708 at 2-3 (February 23, 1999).

Subsequent to the adoption of Chapter 306, NEPOOL began working to develop a tradable "attribute" certificate system. This system, known as the Generation Information System or GIS, has recently been implemented. The system allows for the trading of electricity attributes separate from the energy commodity and was specifically designed to support various public policy initiatives of the several New England states, including Maine's information disclosure requirements.

As a result of the development of the GIS, we initiated an Inquiry on June 4, 2002 (Docket No. 2002-300) to examine whether the use of tradable certificates pursuant to

¹ The model rule relied on the "tracking" of contractual paths of kilowatt-hours for verification rather than the trading of attribute credits or certificates separate from the energy sale.

the GIS should be incorporated into our information disclosure rule.² We also indicated that the Inquiry would consider other modifications that would improve the operation of the rule. Central Maine Power Company, Bangor Hydro-Electric Company, the Public Advocate, Independent Energy Producers of Maine, Constellation Power Source, Inc., Union of Concerned Scientists, Strategic Energy LLC, Jon Reisman, and Maine Public Service Company provided comments during the Inquiry. Most of the commenters in the Inquiry supported the use of GIS certificates for purposes of complying with the information disclosure requirements, and no commenter opposed the use of the system.

As discussed below, we propose to amend Chapter 306 to adopt the use of GIS certificates for purposes of satisfying the rule's requirements. We also propose several amendments to improve the rule's operation and to simplify its language and requirements. Chapter 306 is a major substantive rule and we will therefore submit a provisionally adopted rule to the Legislature pursuant to 5 M.R.S.A. § 8072.

III. DISCUSSION OF PROPOSED AMENDMENTS

A. Overview

The proposed rule amends several provisions to incorporate the use of the GIS for purposes of determining and verifying resource mix and emission information contained on the disclosure label. The GIS was specifically designed to facilitate compliance with various public policy initiatives of the several New England states, including Maine's information disclosure rule. We view the implementation of the GIS as a substantial step in the evolution of competitive electricity markets. The system should allow for the creation of secondary markets for attribute certificates, substantially reduce supplier costs of complying with a variety of differing New England state requirements, and greatly simplify verification efforts.

The proposed rule adopts GIS for service to customers in the ISO-NE control area, but essentially maintains the existing requirements for service to customers in northern Maine. The GIS is only applicable to service in the ISO-NE control area, and there is currently no attribute system in northern Maine. We agree with the commenters in the Inquiry that, due to the small size of the market, a GIS-type system in northern Maine would likely be cost-prohibitive. As a result, the proposed rule contains separate compliance requirements depending on whether service is provided in the ISO-NE control area or the northern Maine market.

² The Inquiry also examined whether to incorporate the use of GIS certificates in our eligible resource portfolio requirement (Chapter 311). We recently initiated a rulemaking proceeding and issued a proposed rule that requires the use of GIS certificates for verifying compliance with that requirement. *Amendments to Eligible Resource Portfolio Requirement Rule (Chapter 311)*, Docket No. 2002-494 (Sept. 3, 2002).

As noted above, the current rule was designed to mirror the NECPUC model disclosure rule as well as the Massachusetts disclosure rule, in both substance and form. Commenters in the Inquiry generally agreed that the development of the GIS has diminished the usefulness of the NEPUC model rule and that regional consistency is now best promoted through the use of the GIS. We agree. We also believe that, as a general matter, improved operation of the rule should have a higher priority than maintaining strict uniformity with various provisions of the model rule or rules in other New England states. We thus propose a variety of substantive changes to the rule. We also propose to eliminate a significant amount of the language in the rule (initially taken primarily from the model rule) to remove unnecessary or confusing detail or to facilitate supplier compliance.

Through this rulemaking proceeding, we seek comment on the proposed amendments, as well as on provisions that are unchanged in the proposed rule.

B. Definitions (Section 1)

The proposed rule adds definitions of the “GIS” and “GIS Certificates.” The definitions reference the recently implemented NEPOOL system. We also propose to add a definition of “ISO-NE control area” and “residential and small commercial customers” and delete the definitions of “northern Maine” and “marketer” because those terms are not used in the proposed rule.

C. Larger Customer Applicability (Sections 2(A)(3))

The proposed rule expands the applicability of the disclosure requirements to suppliers that serve medium and large customers by deleting the “applicability” provision of the rule. The current rule requires disclosure labels to be provided to residential and small commercial customers upon initiation of service and every three months thereafter; disclosure information is required to be provided to larger customers only upon request. The proposed rule (section 2(E)) requires medium and large customer suppliers to provide disclosure labels to their customers upon initiation of service and every 12 months thereafter.

Subsequent to the initial enactment of the Restructuring Act and promulgation of Chapter 306, the Legislature modified the Act to provide that all CEPs (regardless of the customer sector they serve):

Must provide at least once annually to a customer any
information disclosures required by the commission pursuant
to subsection 3 [of section 3202]

35-A M.R.S.A. § 3203(4-A)(G). We have interpreted this provision as requiring suppliers who serve customers in the medium and large classes to provide label information similar to that required for service to smaller customers once every 12 months. The commenters generally agreed that this interpretation is consistent with the

intent of the provision. We thus modified the rule to implement the annual disclosure requirement for service to medium and large customers.

However, it appears that the requirement for medium and large customers is an unnecessary burden in that prices tend to be specific to individual customers and larger customers are less likely to base their electricity purchase decisions on electricity attributes. If larger customers desire such information, it is likely that they would have the sophistication to obtain it from their suppliers. During the legislative review process of this rule, we are considering asking the Legislature to remove the requirement that medium and large customers be provided label information once every 12 months and to direct us to maintain the requirement in the current rule that suppliers to larger customers provide label information upon the request of the customer. We seek comment on whether we should pursue this legislative change.

D. Price Information (Section 2(B)(2))

The current rule requires that the label provide average unit prices for services that have multiple price components (e.g., fixed and variable charges) or vary by usage characteristics.³ This approach was intended to allow customers to easily compare various service-price offerings. However, because the usage patterns of individual customers vary widely, there is no meaningful way to provide average unit price information that is representative of the customer class. Thus, rather than requiring the disclosure of generic class average rates, the proposed rule requires that the label contain actual prices. At this point, it is our view that actual prices would provide more useful and less confusing information to the customer.

The proposed rule does allow for the use of average prices if actual prices cannot easily be displayed. This could occur, for example, if the prices vary by month and have multiple components or differ by time-of-day. If average rates are used, the proposed rule requires the label to state that the customer's actual rates will deviate from the displayed rate depending on the customer usage patterns. Under the proposed rule, the Director of Technical Analysis must pre-approve the use of average rates.

The proposed rule also specifies that only generally available rates must be included on the label. Our experience is that price offerings are often tailored to individual customer characteristics or are only available for a short period of time (often no longer for a day). Under such circumstances, it is impractical for the label to display actual prices and thus the proposed rule requires the label to state that price quotes will be provided upon request.

Finally, the proposed rule removes the requirement that the label display offered rates at four usage levels. The elimination of this requirement is consistent with our proposal to require actual, rather than average, rates. Additionally, it has been our

³ The average prices are derived by generic class load profiles.

experience that suppliers do not offer rates that vary with level of usage, thus each of the four usage levels on the label have contained the same unit price.

E. Customer Information (Section 2(B)(3))

We propose to modify the customer service provision to clarify that the supplier's phone number must be on the label and that the phone number is for the purpose of customers' obtaining information regarding the label.

F. Resource Portfolio (Section 2(B)(4))

We propose to modify the provisions governing the determination of suppliers' resource portfolio to require that the portfolio be determined on the basis of GIS certificates for service in the ISO-NE control area. In doing so, we propose to eliminate the extensive language in the current rule that details the determination of the resource portfolio. The requirements for service in northern Maine remain substantially unchanged, however specific language has been replaced by more general requirements.

The current rule contemplates that the label would display the supplier's regional New England resource mix. The GIS, however, allows regional suppliers to have resource portfolios for individual states through the use of GIS sub-accounts. The proposed rule requires suppliers to have a Maine GIS sub-account so that the corresponding resource portfolio will be Maine-specific rather than regional. In addition, the proposed rule requires suppliers that serve customers in both the ISO-NE control area and in northern Maine to combine resources into a single statewide resource portfolio unless the supplier disaggregates its portfolio into separate products based on control area. We seek comment on this approach as opposed to an alternative in the proposed rule that would require separate resource portfolios for each control area.

The proposed rule specifies that the label reporting period for the resource portfolio is the most recent calendar year for which information is available. The current rule requires the reporting period to be the most recent 12-month period. The proposed rule requires the prior calendar year so that the label will show a resource mix that complies with Maine's 30% eligible resources portfolio requirement.⁴ In implementing the current rule, we have received many questions as to why labels often do not show compliance with Maine's portfolio requirement. One of the reasons for this discrepancy is the difference in reporting periods between the two rules. The downside to the approach in the proposed rule, however, is that the customers receive increasingly older information regarding the supplier's portfolio throughout the year. Moreover, the GIS certificate trading period occurs approximately 6 months after the end of the applicable calendar quarter. This means that for the first half of a given year, the proposed rule

⁴ Our eligible resource portfolio requirement rule (Chapter 311) requires compliance over each calendar year.

would result in a reporting period that is the year prior to the previous year. We explicitly seek comment on whether the reporting period should be the prior calendar year or a more recent period (either a recent 12 month period or a recent calendar quarter).

Finally, the proposed rule continues to allow providers to disaggregate their portfolios into separate products. The proposed rule specifies that, for service in the ISO-NE control area, suppliers must have a separate GIS sub-account for each disaggregated product.

G. Fuel Mix (Section 2(B)(5))

We propose to remove the requirement that all fuel types listed in the rule be presented on the label regardless of whether the provider's portfolio contains a particular fuel source. We view it as preferable and less confusing for providers to only list those sources in their mix, rather than to list sources with corresponding zero percentages.

H. Emissions (Section 2(B)(6))

The proposed rule maintains the basic requirement in the current rule that carbon dioxide, nitrogen oxides and sulfur dioxide be included on the label and compared to the New England regional average. The GIS does track additional emissions;⁵ however, as pointed out by several commenters in the Inquiry, the three emissions on the current label are generally of most interest to the public and we are concerned that adding too much information to the label would be confusing to consumers. The proposed rule does allow the Commission by order to require that other emissions be displayed on the label and interested persons may therefore petition the Commission to include other emissions. The proposed rule also substitutes the more neutral language "emissions," in place of "pollutants."

Our experience in implementing the current label requirements has revealed that it is difficult to obtain accurate emission data for carbon dioxide. The difficulty exists because carbon dioxide is not generally reported to federal or state environmental agencies. Because the GIS is essentially a self-reporting system, we seek comment on whether the Commission can have a reasonable amount of confidence that the GIS will produce accurate emissions information for carbon dioxide and what actions the Commission can take to ensure that the carbon dioxide label information is reasonably accurate.

The proposed rule specifies that the Commission may determine carbon dioxide offsets by order either with respect to individual or certain categories of generating facilities. Commenters in the Inquiry have stated that the rule should provide that carbon dioxide emissions for biomass facilities should be considered zero because of

⁵ These are CO, PM and PM10, mercury, and volatile organic compounds.

the absorption of carbon dioxide during the biomass growth cycle. We have not incorporated a general biomass offset in the proposed rule. At this point, we do not have enough information to make a sound judgment on the issue, nor do we think this rulemaking process is the best forum to consider the issue. A proceeding specifically initiated to consider the issue would be a superior approach. We thus invite advocates of biomass offsets to file a petition pursuant to the rule asking the Commission to consider the biomass offset issue.

I. Format of the Label (Section 2(B)(7))

We propose to redesign the format of the label to make it more understandable to customers. We have modified the resource mix portion of the label to show the portion of the portfolio made up of eligible resources under Maine's portfolio requirement. We have added a column indicating the New England mix for comparative purposes. We ask for comment on whether the fuel source categories listed in section 2(B)(5) of the proposed rule or the requirement for a comparison to the New England mix is inconsistent with the operation of the GIS or presents any other undue complications. In presenting air emission information, the proposed label eliminates the bar graph and instead contains actual emission figures and percentage comparisons to regional averages. Finally, we propose to modify the label language requirement to make the language consistent with proposed rule changes and more understandable. As suggested by a commenter in the Inquiry, we have also made the label language more neutral by removing references to "pollutants," we do not, however, propose to further modify the carbon dioxide description that was taken for the most part from the NECPUC model rule.

J. Distribution of Labels (Sections 2(E)(5))

The proposed rule contains several changes to the label distribution provisions. To provide greater flexibility in marketing to customers, we propose to remove the requirement that the label be provided with the terms of service document. The proposed rule maintains the requirement that the label be provided before the initiation of service.

The proposed rule includes provisions that specify that medium and large customer suppliers must provide a label once every 12 months. The current requirement that labels be provided to residential and small non-residential customers every three months is unchanged in the proposed rule. We also propose to modify the standard offer provision so that labels are distributed three months after the beginning of service, rather than six months as required in the current rule.

Finally, the proposed rule adds a requirement that transmission and distribution (T&D) utilities, upon the request of a supplier, prepare and distribute labels. Utilities would charge suppliers for this service at Commission approved rates. The current rule requires T&D utilities to prepare and distribute labels for standard offer providers. Our Staff has had been told by competitive providers in which the providers

stated that utility preparation and distribution of labels provides standard offer service with an advantage and that competitive suppliers could benefit from the same service. We thus propose to require utilities to provide the same service to competitive providers that they currently provide for standard offer providers.

K. Verification (Section 2(H))

The proposed rule modifies the verification section to incorporate the GIS as the method for demonstrating compliance with respect to service in the ISO-NE control area, but allows the Commission to accept alternative means of verification upon good cause for service during calendar year 2002. The verification approach remains essentially the same for service in northern Maine.

Although the GIS was recently implemented, the system's first trading period was for service during the first quarter of 2002. To correspond with the start of GIS certificate trading, the proposed rule adopts use of the GIS beginning with service in January 2002. Some suppliers may have reasonably relied on other means to verify compliance consistent with the provisions in the current rule. Thus, the proposed rule allows for a transition period in which the Commission may allow for alternative means of verification upon a showing that a supplier reasonably relied on the existence of the current rules or for other good cause.

The proposed rule also contains a provision that would allow the Commission to reject the use of certain certificates for purposes of the label if it finds that the certificates do not reflect accurate information or for other good cause. Under the GIS, the generators input the information contained on their certificates. As a result, it is possible that the Commission, upon investigation, may conclude that information on certain certificates is not accurate and thus may reject their use for purposes of Maine rules. We also propose to add an explicit provision that the Commission may initiate investigations and obtain information from generation facilities to verify the accuracy of certificate information.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on November 7, 2002 at 1:30 p.m., at the Public Utilities Commission. Written comments on the proposed Rule may be filed with the Administrative Director until November 20, 2002. However, the Commission requests that comments be filed by November 1, 2002 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 2002-494 and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Public Utilities Commission if special accommodations are needed in order to make the hearing accessible by calling 287-1396 or

TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

O R D E R

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

- a. All electric utilities in the State;
- b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
- c. All licensed competitive electricity providers;
- d. All commenters in *Inquiry into Modifications of Portfolio Requirement and Disclosure Rules*, Docket No. 2002-300.

2. That the Administrative Director shall send copies of this Notice of Rulemaking and attached proposed rule to:

- a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
- b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, and this 8th day of October, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.